IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 858 OF 2007

M/S. ANGAL & COMPANY THROUGH ITS PARTNER SHRI DILIP S. ANGAL .. PETITIONER.

VS.

DR.DEVYANI SUBHASH LATHI AND ORS. .. RESPONDENTS.

MR. SHAILENDRA S. KANETKAR FOR THE PETITIONER.

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CORAM : A.P.DESHPANDE, J.

DATE : February 6, 2007.

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P.C.

1. An Order passed below Exhibit 214, allowing the application, is challenged by filing the instant petition.

2. The Original Plaintiff instituted a suit for partition and separate possession of the joint family property. Besides the original plaintiff No.1, the original defendant Nos. 5 & 6 together claim 1/3rd share in the joint family property, besides the claim of defendant No.1, to the extent of remaining 1/3rd share.

3. The Present Petitioner is a Developer, developing the suit property under an authority given by defendant NO.1. In the plaint as filed, it was categorically stated that as the original defendant NO. 5 & 6 were then not available to sign and verify the plaint, they were impleaded as defendant NO. 5 & 6. When they became available, they moved an application for transposition as Plaintiffs. The transposition came to be allowed. Thereafter as the plaintiff had not changed the valuation of the suit property and had not paid the requisite court fee, the present petitioner has filed an application, seeking directions in regard to amendment of the valuation so also the consequential directions for payment of the Court fee stamp. Trial Court passed an Order to that effect on 20th January, 2007. It directed the consequential amendment of the plaint with a view to correct the valuation and for

payment of the requisite court fee. Thereafter, newly added plaintiff Nos. 2 & 3 filed an application for review of the Order, dated 20th January, 2007 and have undertaken to pay the court fee stamp after the preliminary decree is passed. The said application for Review is pending and the trial court has not passed any Orders thereon till date.

4. As the Original Plaintiff No.1 was to go abroad and as the recording of her evidence was very necessary, the Trial Court, having regard to the fact that the Suit property is very valuable property running into crores of rupees, has peremptorily fixed the matter for cross-examination of the Plaintiff No.1. I am informed by the learned Counsel for the Petitioner that the Suit is listed today before the Trial Court for cross-examination of the Plaintiff No.1. At this stage, the learned Counsel for the Petitioner submits that unless and until the plaint is amended correcting the valuation and court fee is paid thereon, the further proceeding need to be stayed. I do not agree with the said submissions. The Court can recover the amount of court fees, which the Plaintiff Nos. 2 & 3 undertook to pay at a latter point of time, after it passes

appropriate order on review application. The endeavour on the part of the Trial Court to proceed with the cross-examination of the Plaintiff is with a view to achieve a just and complete adjudication of the issues involved in the matter. The Trial Court's attempt is in furtherance of cause of justice and hence, at this stage, no interference is called for in exercise of the writ jurisdiction.

5. It is made clear that the issue in regard to amendment of the plaint touching the valuation of the suit property and payment of court fees, is kept open and the same would be dealt with by the Trial Court, while deciding the review application.

In the result, the Writ Petition fails and is summarily dismissed.

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[A.P.DESHPANDE, J.]